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SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 588

REVISION OF DELEGATION OF AUTHORITY REGULATIONS

Decided: September 18, 2002

The Surface Transportation Board is revising the delegation of authority regulations at 49 CFR part 1011 to reflect changes made by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA) and other changes. These rules set out the organization of the Board and procedures in processing cases, certain litigation, and informal opinions. The regulations were originally codified at 42 FR 65181 (Dec. 30, 1977). They were formerly the Interstate Commerce Commission's (ICC) Organization Minutes and had been published in the Federal Register (but not codified) at 39 FR 25569 (July 11, 1974). Since the passage of the ICCTA, they have been updated several times. Expedited Procedures for Processing Rail Rate, 1 S.T.B. 754 (1996); Modifications to the General Provisions of the Board, 2 S.T.B. 611 (1997); Technical Amendments Concerning Employee Boards, 2 S.T.B. 635 (1997) (Technical Amendments); Revision of Miscellaneous Regulations, STB Ex Parte No. 572 (Sub-No. 2) (STB served Oct. 1, 1999) (64 FR 53264) (Miscellaneous Regs); and Class Exemption for Motor Passenger Intra-Corporate Family Transactions, STB Finance Docket No. 33685 (STB served Feb. 18, 2000).

49 CFR 1011.1, General and 49 CFR 1011.2, The Board

Sections 1011.1 and 1011.2 do not, with one exception, need to be revised. Section 1011.1 defines terms used in part 1011 and is unchanged. Section 1011.2 describes the duties and authority of the Board, and it does not need to be updated because of changes in the ICCTA or Board policy. We are, however, at section 1011.2(a)(5), changing a cross-reference from section 1011.5(a)(6) to section 1011.4(a)(6) and, at section 1011.2(a)(7), changing a cross-reference from section 1011.8(c) to section 1011.7(b), due to the removal of parts of the rules.

The remaining sections of part 1011 (sections 1011.3 to 1011.8) contain obsolete, outdated, or incorrect references and will be modified.

49 CFR 1011.3, Divisions of the Board

This section will be deleted. Under former 49 U.S.C. 10302, the ICC was authorized to establish divisions composed of at least 3 Commissioners. This statutory provision was removed by the ICCTA, and the Board is limited to 3 members (49 U.S.C. 701(b)(1)). See also Miscellaneous Regs. By removing this section, the remaining Delegation of Authority sections (1011.4 to 1011.8) will be renumbered as sections 1011.3 to 1011.7. Unless otherwise noted, the references in this decision to 49 CFR part 1011 will be to the sections of that part as numbered prior to the changes we are adopting in this decision.

49 CFR 1011.4, The Chairman, Vice Chairman, and Senior Board Member present

Because there are only 3 members of the Board, the reference in the heading of this section to “Senior Board Member present” will be changed to “Board Member.” Also, in section 1011.4(a)(3), we are changing the reference to the “senior Board Member present, based on time of continuous service as a member of the Board” to “remaining Board Member.” We also are updating the statutory references concerning the designation and authority of the Chairman in section 1011.4(a)(1) by changing references from former 49 U.S.C. 10301(b) and 10301(f) (pertaining to the number of Commissioners and the powers of the Chairman) to 49 U.S.C. 701(c)(1) and (c)(2) (the comparable updated sections).

We are removing the obsolete reference “except for investigations under 49 U.S.C. 10708” in section 1011.4(c)(10). Former 49 U.S.C. 10708, pertaining to investigating and suspending new nonrail rates, was eliminated by the ICCTA. Also, as explained, *infra*, we are removing the reference to initial decisions by hearing officers in section 1011.4(c)(11)(ii). Finally, because section 1011.3 is being eliminated, the remainder of section 1011.4 will be renumbered as 49 CFR 1011.3.

49 CFR 1011.5, Delegations to individual Board Members

Section 1011.5(a). This section pertains to authority delegated to the Chairman. We are removing section 1011.5(a)(7) concerning the issuance of certificates and decisions in abandonment proceedings when no protests are filed. The Board has dispensed with the issuance of certificates because the ICCTA no longer requires that they be issued when an abandonment application is granted. See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894, 906 (1996).¹ We also are correcting the reference in section 1011.5(a)(9) concerning the designation by

¹ We do continue to issue Certificates of Interim Trail Use or Abandonment, because the term certificate is well known in the trail use context. See Aban. and Discon. of R. Lines and Transp. Under
(continued...)

the Chairman of an employee to inspect records from section 49 U.S.C. 15721 (which is simply a definition section) to 49 U.S.C. 15722 (which concerns inspection of records).

Section 1011.5(b). In section 1011.5(b)(3), the Vice Chairman, “in cases of calamitous visitation,” is referred matters of reduced rate authorization under 49 U.S.C. 10721 and relief from the released rates provisions of 49 U.S.C. 10730. We are eliminating this provision. Former section 22(1) of the Interstate Commerce Act allowed common carriers to give reduced rates “to or from any section of the country” with ICC approval “in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster. . . .” Section 22(1) was recodified, in relevant part at former 49 U.S.C. 10724 (emergency rates). Former section 10724 allowed a common carrier “to give reduced rates for service and transportation of property . . . to provide relief during emergencies.”² Under the ICCTA, former section 10724 was eliminated, and, accordingly, we will remove section 1011.5(b)(3).

Section 1011.5(c). The reference to “any other Board member” will be changed to “other Board Member.”

49 CFR 1011.6, Employee boards

This section was revised in Technical Amendments, and is up-to-date. We are making editorial changes to references to the Interstate Commerce Act, and this section will be renumbered as 49 CFR 1011.5.

49 CFR 1011.7, Delegations of authority by the Chairman

Section 1011.7(c)(1). We are making changes to 49 CFR 1011.7(c)(1)(iv) and (v), which concern the postponement of effective dates of certain decisions and orders. We are removing section 1011.7(c)(1)(iv) involving orders that suspend or revoke operating authority because, under the ICCTA, the Board’s licensing authority was replaced by motor carrier “registration,” which has been transferred to the Secretary of the Department of Transportation. Michelin North America,

¹(...continued)
49 U.S.C. 10903, 1 S.T.B. 894, 906 (1996).

² When the Interstate Commerce Act was recodified without substantive change in 1978, under former section 10724(b), the term “emergencies” was substituted for “in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster.” This change was done “for clarity and to eliminate redundancy.” H.R. Rep. No. 1395, 95 Cong., 2d Sess. at 88 (1978).

Inc.—Petition for Declaratory Order— Certain Rates and Practices of Pjax, Inc., STB Docket No. 42011 (STB served Jan. 28, 1998). In section 1011.7(c)(1)(v), the reference to the discretionary review section will be corrected from 49 CFR 1115.5 (which refers to petitions for other relief) to 49 CFR 1115.3.³

Sections 1011.7(c)(2) and 1011.7(c)(3). These sections concern the disposition of procedural matters by Board Members, administrative law judges, joint boards, and the Secretary. We are removing the reference to joint boards in the second sentence of section 1011.7(c)(2) because the ICCTA did not reenact former 49 U.S.C. 10341-44, which authorized the establishment and operation of joint boards. Section 1011.7(c)(3) also refers to the Secretary deciding whether operating rights applications are to be handled under modified procedure. This reference will be removed because, as noted, the Board no longer has motor licensing authority.⁴

There are other obsolete provisions in these sections. The first sentence of section 1011.7(c)(2) indicates that the Chief Administrative Law Judge (CALJ) is delegated the authority to dispose of procedural matters before an initial decision is issued in a proceeding assigned for handling under oral hearing procedure or assigned to an administrative law judge (ALJ) under modified procedure. There is no longer an Office of Hearings so we are deleting references to the CALJ. (This also applies to section 1011.7(c)(3) and (d).) While the Board still uses ALJs, they do not issue initial

³ When former section 1011.7(c)(1) was originally codified (43 FR 1091, Jan. 6, 1978), procedural matters included “final decisions where petitions for discretionary review have been filed under Rule 98(e) of the general rules of practice, 49 CFR 1100.98(e).” Former Rule 98(e), involving discretionary review in rail proceedings, was the precursor to current rule 49 CFR 1115.3. Rule 98 was revised in 1979, and Rule 98(e) became Rule 98(c). Rail Appellate Procedures - Revision of Rule 98, 361 I.C.C. 591 (1979). Section 1011.7(c)(1), however, was not changed, and still referred to Rule 98(e). Rule 98 was again revised in 1981, with the rail and nonrail appeals rules unified into a single rule. Appellate Procedures, 132 M.C.C. 539 (1981). In that revision, the discretionary review section remained Rule 98(c) but the “petitions for other relief” section became Rule 98(e). Section 1011.7(c)(1) remained unchanged, referring to Rule 98(e). Subsequently, the Rules of Practice were revised (Revision and Redesignation of the Rules of Practice, Ex Parte No. 55 (Sub-No. 55), 47 FR 49534, 49541-42 (Nov. 1, 1982)), and Rule 98(c) became 49 CFR 1115.3 and Rule 98(e) became 49 CFR 1115.5. Section 1011 was also amended then to reflect those redesignations, but, in doing so, continued what had become an incorrect reference to Rule 98(e) by referencing 49 CFR 1115.5, “Petitions for other relief.” By changing this reference to section 1115.3, we are simply correcting the rule so that it once again applies to discretionary appeals.

⁴ The second sentence of this section has the redundant reference to “be assigned set for oral hearings.” We are removing “set.”

decisions. They are used, however, in the language of section 1011.7(c)(2), “in proceedings assigned for hearing under oral hearing procedure.” Accordingly, some reference to an ALJ’s authority to handle procedural matters will be retained. We will combine section 1011.7(c)(2) into one sentence: “Unless otherwise ordered by the Board in individual proceedings, authority to dispose of procedural matters is delegated to administrative law judges or Board Members in proceedings assigned to them.”

Under section 1011.7(c)(3), the Secretary of the Board has authority to handle routine procedural matters under modified procedure not assigned to an ALJ or after the issuance of an initial decision by a hearing officer in a proceeding subject to an oral hearing. We are revising this to: “Unless otherwise ordered by the Board in individual proceedings, authority to dispose of routine procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an administrative law judge or a Board Member, is assigned to the Secretary of the Board.”

Sections 1011.7(d), (f), and (i). Section 1011.7(d) concerns the authority of the Secretary or the CALJ to dismiss a complaint or application at the request of the complainant or the applicant, respectively, except as provided by 49 CFR 1113.3(b)(1). (That section provides that the hearing officer can decide motions to dismiss a proceeding.) We are delegating this authority only to the Secretary.

In section 1011.7(f), concerning authority to decide access to waybills and statistics, we are updating the reference from the Director of the Office of Economics to the Director of the Office of Economics, Environmental Analysis, and Administration.

Section 1011.7(i) provides that the Director of the Office of Proceedings will issue certificates and decisions when no protest is received within 30 days of the filing of an abandonment or discontinuance application. As noted, the Board no longer issues certificates. Moreover, there is no longer a requirement that a decision be issued in 30 days when no protest is filed. Accordingly, we will remove this section.

Section 1011.8, Delegations of authority by the Board to specific offices of the Board

Section 1011.8(a), Office of Congressional and Public Services. The regulations here were originally codified in final rules issued at 45 FR 48631 (July 21, 1980). They were revised in Commission Organization; Delegations of Authority, 2 I.C.C.2d 126 (1986). These rules will be eliminated. They have out-of-date references (such as to the Office of Hearings, the Special Counsel, and the Small Business Assistance Office). They also contain unnecessary information (such as the mission of the Office). As is the case for other Board offices, the functions of the Office of Congressional and Public Services should not be listed in regulations pertaining to delegation of authority.

Sections 1011.8(b) and (d), Offices of Secretary and Compliance and Enforcement. The regulations for the Office of Secretary (former section 1011.8(b)) were updated in Miscellaneous Regs. They will be renumbered as section 1011.7(a), and references to the Office of the Secretary will be changed to the Secretary. The Office of Compliance and Enforcement (former section 1011.8(d)) was amended in Technical Amendments. The only change we are making is to renumber it as section 1011.7(c).

Sections 1011.8(c), Director of the Office of Proceedings. This section will be renumbered as section 1011.7(b). We are including a reference that these delegated powers are in addition to the ones delegated to the Director by the Chairman of the Board at 49 CFR 1011.7(j). We are modifying section 1011.8(c)(1). Under former 49 U.S.C. 10904, the ICC had the authority to investigate protested abandonments. This provision was not retained under the ICCTA. However, the Director does have the authority delegated by the Board under 49 CFR 1152.25(d)(6)(i) to issue decisions on oral hearing requests filed within 10 days after the filing of an abandonment application. Accordingly, we will change section 1011.8(c)(1) to read: “Whether to designate abandonment proceedings for oral hearings on request.”

In section 1011.8(c)(2), we are updating the statutory reference pertaining to offers of financial assistance from former 49 U.S.C. 10905(d) to section 10904(d). In section 1011.8(c)(3)(ii), we are updating the public use condition reference from former 49 U.S.C. 10906 to 49 U.S.C. 10905.

We are removing section 1011.8(c)(7), which deals with exemptions under former 49 U.S.C. 11343(e) for finance transactions (control, mergers, purchases) involving nonrail intermodal parties. Section 11343(e) has been eliminated.

Section 1011.8(c)(8), concerning the discontinuance of a subsidy, will be updated, with reference to former section 10905 being changed to section 10904.⁵ Because we no longer issue abandonment or discontinuance certificates, the language in section 1011.8(c)(8)(i) is being modified to read, “[i]n application proceedings, immediately issuing decisions authorizing abandonment or discontinuance. . . .”

The reference in section 1011.8(c)(9) concerning feeder line procedures will be changed from former 49 U.S.C. 10910 to 49 U.S.C. 10907.

⁵ While the requirement that a subsidy be discontinued on 60 days’ notice under former section 10905(f)(5) was not carried over by the ICCTA, under 49 CFR 1152.27(j), a subsidizer is still required to give 60 days’ notice of the discontinuance of the subsidy.

Section 1011.8(c)(11) is being revised and updated. It will be renumbered as section 1011.7(b)(10). Section 1011.8(c)(11)(i) is being changed to reflect the new statutory provision (49 U.S.C. 10902) for the acquisition and operation of lines by Class II or Class III rail carriers. Currently, the section only refers to the acquisition, lease, or operation transactions under 49 U.S.C. 10901. Accordingly, new section 1011.7(b)(10)(i) will read: “For acquisition, lease, and operation transactions under 49 U.S.C. 10901 and 10902 and the implementing regulations at 49 CFR part 1150, subparts D and E.” We are also adding a new section 1011.7(b)(10)(ii) reflecting the authority to issue notices of exemption for connecting track construction transactions. This section will read: “For connecting track constructions under 49 U.S.C. 10901 and the implementing regulations at 49 CFR 1150.36[.]” Former section 1011.8(c)(11)(ii) is being renumbered as section 1011.7(b)(10)(iii) and revised to reflect that former 49 U.S.C. 11343 has been changed to 49 U.S.C. 11323. We are adding a new section 1011.7(b)(10)(iv) indicating, pursuant to 49 CFR 1152.50(d)(3), that the Director has the authority to issue notices of exemption for abandonments and discontinuances. This new section will read: “For abandonments and discontinuances under 49 U.S.C. 10903 and the implementing regulations at 49 CFR 1152.50.”

We also are adding a new section 1011.7(b)(11) to reflect that the Director of the Office of Proceeding is delegated the authority to issue notices under 49 CFR 1152.24(e)(2) and 49 CFR 1152.60 of the filing of applications and of petitions for exemption to abandon or discontinue rail service. The new section will read: “When an application or a petition for exemption for abandonment is filed, the Director will issue a notice of that filing pursuant to 49 CFR 1152.24(e)(2) and 49 CFR 1152.60, respectively.”

We are changing the reference in section 1011.8(c)(16) from “Burlington Northern Railroad Company” to “The Burlington Northern and Santa Fe Railway Company.”

We are removing section 1011.8(c)(17) concerning extending the 120-day limit for motor carrier rate bureaus to finally dispose of rules or rates docketed with them. The 120-day limit was found in former 49 U.S.C. 10706(b)(3)(B)(vii), but this provision was not reenacted.⁶

We are removing section 1011.8(c)(18) concerning provisional state recertification. Under the ICCTA, the former certification regime no longer exists. See State Intrastate Rail Rate Authority — Pub. L. No. 96-448, Ex Parte No. 388 (STB served Apr. 3, 1996).

Because these changes relate solely to the rules of agency practice, procedure, and organization, they will be issued as final rules without requesting public comment. See 5 U.S.C. 553(b)(A).

⁶ Although not mandated by statute, the 120-day limit may be part of a rate bureau agreement. The Board would be able to consider a request for an extension of this limit.

Moreover, we find good cause for making these rules effective on less than 30 days' notice under 5 U.S.C. 553(d), so that these changes will be effective by October 1, 2002, which is the cut-off date for revisions to the next edition of the applicable Code of Federal Regulations volume.

The Board certifies that these rule changes will not have a significant economic effect on a substantial number of small entities. The changes being made largely pertain to agency management, personnel, and procedure, and should have no impact on small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

It is ordered:

1. The final rules set forth in the Appendix to this decision are adopted. Notice of the rules adopted here will be published in the Federal Register.
2. This decision is effective on September 30, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

APPENDIX

For the reasons set forth in the preamble, part 1011, of title 49, chapter X, of the Code of Federal Regulations is revised as follows:

PART 1011 — BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

Sec.

1011.1 General.

1011.2 The Board.

1011.3 The Chairman, Vice Chairman, and Board Member.

1011.4 Delegations to individual Board Members.

1011.5 Employee boards.

1011.6 Delegations of authority by the Chairman.

1011.7 Delegations of authority by the Board to specific offices of the Board.

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 11144, 14122, and 15722.

§ 1011.1 General

(a) This part describes the organization of the Board, and the assignment of jurisdiction and the responsibilities to the Board, individual Board Members or employees, and employee boards.

(b) As used in this part, matter includes any case, proceeding, question, or other matter within the Board's jurisdiction; and decision includes any decision, ruling, order, or requirement of the Board, an individual Board Member or employee, or an employee board.

§ 1011.2 The Board

(a) The Board reserves to itself for consideration and disposition:

(1) All rulemaking and similar proceedings involving the promulgation of rules or the issuance of statements of general policy.

(2) All investigations and other proceedings instituted by the Board, except as may be ordered in individual situations.

(3) All administrative appeals in a matter previously considered by the Board.

(4) All other matters submitted for decision except those assigned to an individual Board Member or employee or an employee board.

(5) Except for matters assigned to the Chairman of the Board under §1011.4(a)(6),

(i) The determination of whether to reconsider a decision being challenged in court;

(ii) The disposition of matters that have been the subject of an adverse decision by a court; and

(iii) The determination of whether to file any memorandum or brief or otherwise participate on behalf of the Board in any court.

(6) The disposition of all matters involving issues of general transportation importance, and the determination whether issues of general transportation importance are involved in any matter.

(7) All appeals of initial decisions issued by the Director of the Office of Proceedings under the authority delegated by §1011.7(b). Appeals must be filed within 10 days after service of the Director decision or publication of the notice, and replies must be filed within 10 days after the due date for appeals or any extension thereof.

(b) The Board may bring before it any matter assigned to an individual Board Member or employee or employee board.

§ 1011.3 The Chairman, Vice Chairman, and Board Member

(a)(1) The Chairman of the Board is appointed by the President as provided by 49 U.S.C. 701(c)(1). The Chairman has authority, duties, and responsibilities assigned under 49 U.S.C. 701(c)(2) and described in this part.

(2) The Vice Chairman is elected by the Board for the term of 1 calendar year.

(3) In the Chairman's absence, the Vice Chairman is acting Chairman, and has the authority and responsibilities of the Chairman. In the Vice Chairman's absence, the Chairman, if present, has the authority and responsibilities of the Vice Chairman. In the absence of both the Chairman and Vice Chairman, the remaining Board Member is acting Chairman, and has the authority and responsibilities of the Chairman and Vice Chairman.

(b)(1) The Chairman is the executive head of the Board and has general responsibilities for:

- (i) The overall management and functioning of the Board;
 - (ii) The formulation of plans and policies designed to assure the effective administration of the Interstate Commerce Act and related Acts;
 - (iii) Prompt identification and early resolution, at the appropriate level, of major substantive regulatory problems; and
 - (iv) The development and use of effective staff support to carry out the duties and functions of the Board.
- (2) The Chairman of the Board exercises the executive and administrative functions of the Board, including:
- (i) The appointment, supervision, and removal of Board employees, except those in the immediate offices of Board Members other than the Chairman;
 - (ii) The distribution of business among such personnel and among administrative units of the Board; and
 - (iii) The use and expenditures of funds.
- (3) In carrying out his or her functions, the Chairman is governed by general policies of the Board and by such regulatory decisions, findings, and determinations as the Board by law is authorized to make.
- (4) The appointment by the Chairman of the heads of offices is subject to the approval of the Board. All heads of offices report to the Chairman.
- (c)(1) The Chairman presides at all sessions of the Board and sees that every vote and official act of the Board required by law to be recorded is accurately and promptly recorded by the Secretary or the person designated by the Board for that purpose.
- (2) Regular sessions of the Board are provided for by Board regulations. The Chairman may call the Board into special session to consider any matter or business of the Board. The Chairman shall convene a special session to consider any matter or business on request of a member of the Board unless a majority of the Board votes either not to hold a special session or to delay conference consideration of that item, or unless the Chairman finds that special circumstances warrant a delay. Notwithstanding the two immediately preceding sentences of this paragraph, on the written request of any member of the Board, the Chairman shall schedule a Board conference to discuss and vote on significant Board

proceedings involving major transportation issues, and such conference shall be held within a reasonable time following the close of the record in the involved proceeding.

(3) The Chairman exercises general control over the Board's argument calendar and conference agenda.

(4) The Chairman acts as correspondent and speaks for the Board in all matters where an official expression of the Board is required.

(5) The Chairman brings any delay or failure in the work to the attention of the supervising Board Member, employee, or board, and initiates ways of correcting or preventing avoidable delays in the performance of any work or the disposition of any matter.

(6) The Chairman may appoint such standing or ad hoc committees of the Board as he or she considers necessary.

(7) The Chairman may reassign related proceedings to a board of employees and may remove a matter from an individual Board Member or employee or employee board for consideration and disposition by the Board.

(8) The Chairman may authorize any officer, employee, or administrative unit of the Board to perform a function vested in or delegated to the Chairman.

(9) The Chairman authorizes the institution of investigations on the Board's own motion, and their discontinuance at any time before hearing.

(10) The Chairman approves for publication all publicly issued documents by an office, except:

(i) Those authorized or adopted by the Board or an individual Board Member that involve decisions in formal proceedings;

(ii) Decisions or informal opinions of an office; and

(iii) Documents prepared for court cases or for introduction into evidence in a formal proceeding.

§ 1011.4 Delegations to individual Board Members.

(a) The following matters are referred to the Chairman of the Board:

(1) Entry of reparation orders responsive to findings authorizing the filing of statements of claimed damages as provided at 49 CFR part 1133.

(2) Extensions of time for compliance with orders and procedural matters in any formal case or pending matter, except appeals taken from the decision of a hearing officer on requests for discovery.

(3) Postponement of the effective date of orders in proceedings that are the subject of suits brought in a court to enjoin, suspend, or set aside the decision.

(4) Dismissal of complaints and applications on the unopposed motion of any party.

(5) Requests for access to waybills and to statistics reported under orders of the Board.

(6) Exercise of control over litigation arising under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), except for determinations whether to seek further judicial review of:

(i) A decision in which a court finds under 5 U.S.C. 552(a)(4)(F) that Board personnel may have acted arbitrarily or capriciously in improperly withholding records from disclosure; or

(ii) A decision in which a court finds under 5 U.S.C. 552a(g)(4) that Board personnel acted intentionally or wilfully in violating the Privacy Act.

(7) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed.

(8) Designation in writing of employees authorized to inspect and copy records and to inspect and examine lands, buildings, and equipment pursuant to 49 U.S.C. 11144, 14122, and 15722.

(b) The following matters are referred to the Vice Chairman of the Board:

(1) Matters within the jurisdiction of the Accounting Board if certified to the Vice Chairman by the Accounting Board or if removed from the Accounting Board by the Vice Chairman.

(2) Matters involving the admission, disbarment, or discipline of practitioners before the Board under 49 CFR part 1103.

(c) The Chairman, Vice Chairman, or other Board Member to whom a matter is assigned under this part may certify such matter to the Board.

(d) The Chairman shall notify all Board Members that a petition for a stay has been referred to the Chairman for disposition under paragraphs (a)(2) or (3) of this section. The Chairman shall also inform all Board Members of the decision on that petition before service of such decision. At the request of a Board Member, made at any time before the Chairman's decision is served, the petition will be referred to the Board for decision.

§ 1011.5 Employee boards.

This section covers matters assigned to the Accounting Board, a board of employees of the Board.

(a) The Accounting Board has authority:

(1) To permit departure from general rules prescribing uniform systems of accounts for carriers and other persons under the Interstate Commerce Act, and from the regulations governing accounting and reporting forms;

(2) To prescribe rates of depreciation to be used by railroad and water carriers;

(3) To issue special authorizations permitted by the regulations governing the destruction of records of carriers subject to the Interstate Commerce Act; and

(4) To grant extensions of time for filing annual, periodic, and special reports in matters that do not involve taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(b) The board may certify any matter assigned to it to the Board.

§ 1011.6 Delegations of authority by the Chairman.

(a)(1) This section provides for delegations of authority by the Chairman of the Surface Transportation Board to individual Board employees.

(2) The Chairman of the Board may remove for disposition any matter delegated under this section, and any matter delegated under this section may be referred by the Board employee to the Chairman for disposition.

(b) The Board will decide appeals from decisions of employees acting under authority delegated under this section. Appeals must be filed within 10 days after the date of the employee's action, and replies must be filed within 10 days after the due date for appeals. Appeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

(c)(1) As used in this paragraph, procedural matter includes, but is not limited to, the assignment of the time and place for hearing; the assignment of proceedings to administrative law judges; the issuance of decisions directing special hearing procedures; the establishment of dates for filing statements in cases assigned for hearing under modified (non-oral hearing) procedure; the consolidation of proceedings for hearing or disposition; the postponement of hearings and procedural dates; the waiver of formal specifications for pleadings; and extensions of time for filing pleadings. It does not include interlocutory appeals from the rulings of hearing officers; nor does it include postponement of the effective date of:

(i) Decisions pending judicial review,

(ii) Decisions of the entire Board,

(iii) Cease and desist orders, or

(iv) Final decisions where petitions for discretionary review have been filed under 49 CFR 1115.3.

(2) Unless otherwise ordered by the Board in individual proceedings, authority to dispose of procedural matters is delegated to administrative law judges or Board Members in proceedings assigned to them.

(3) Unless otherwise ordered by the Board in individual proceedings, authority to dispose of routine procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an administrative law judge or a Board Member, is assigned to the Secretary of the Board. The Secretary shall also have authority, unless otherwise ordered by the Chairman or by a majority of the Board in individual proceedings, to decide whether complaint proceedings shall be handled under the modified procedure or be assigned for oral hearings. In carrying out these duties, the Secretary shall consult, as necessary, with the General Counsel and the Director of any Board office to which an individual proceeding has been assigned.

(d) Except as provided at 49 CFR 1113.3(b)(1), authority to dismiss a complaint on complainant's request, or an application on applicant's request, is delegated to the Secretary.

(e) Authority to grant or deny access to waybills and to statistics reported under orders of the Board is delegated to the Director of the Office of Economics, Environmental Analysis, and Administration.

(f) Certain accounts in the Uniform Systems of Accounts, 49 CFR parts 1200 through 1207, require Board approval to use. Authority to grant or deny requests for use of these accounts is delegated to the Director and Associate Director of the Office of Economics, Environmental Analysis, and Administration and the Chief of the Section of Economics.

(g) The Secretary of the Board is delegated authority, under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., to:

(1) Sign and transmit to the Small Business Administration certifications of no significant economic effect for proposed rules, that if adopted by the Board, will not have a significant economic impact on a substantial number of small entities; and

(2) Sign and transmit findings regarding waiver or delay of an initial regulatory flexibility analysis or delay of a final regulatory flexibility analysis.

(h) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed is delegated to the Director of the Office of Proceedings.

§ 1011.7 Delegations of authority by the Board to specific offices of the Board.

(a) The Secretary. The Secretary of the Board is delegated the following authority:

(1) Whether (in consultation with involved Offices) to waive filing fees set forth at 49 CFR 1002.2(f).

(2) To issue, on written request, informal opinions and interpretations (exclusive of informal opinions and interpretations on carrier tariff provisions), which are not binding on the Board. In issuing informal opinions or interpretations, the Secretary shall consult with the Director of the appropriate Board office. Such requests must be directed to the Secretary, Surface Transportation Board, Washington, DC 20423. Authority to issue informal opinions and interpretations on carrier tariff provisions is delegated at paragraph (c)(2) of this section to the Office of Compliance and Enforcement.

(b) Office of Proceedings. In addition to the authority delegated at 49 CFR 1011.6(h), the Director of the Office of Proceedings shall have authority initially to determine the following:

- (1) Whether to designate abandonment proceedings for oral hearings on request.
- (2) Whether offers of financial assistance satisfy the statutory standards of 49 U.S.C. 10904(d) for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations.
- (3) Whether:
 - (i) To impose, modify, or remove environmental or historic preservation conditions; and
 - (ii) In abandonment proceedings, to impose public use conditions under 49 U.S.C. 10905 and the implementing regulations at 49 CFR 1152.28.
- (4) In abandonment proceedings, when a request for interim trail use/rail banking is filed under 49 CFR 1152.29, to determine whether the National Trails System Act, 16 U.S.C. 1247(d), is applicable and, where appropriate, to issue Certificates of Interim Trail Use or Abandonment (in application proceedings) or Notices of Interim Trail Use or Abandonment (in exemption proceedings).
- (5) In any abandonment proceeding where interim trail use/rail banking is an issue, to make such findings and issue decisions as may be necessary for the orderly administration of the National Trails System Act, 16 U.S.C. 1247(d).
- (6) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).
- (7) To issue decisions, after 60 days' notice by any person discontinuing a subsidy established under 49 U.S.C. 10904 and at the railroad's request:
 - (i) In application proceedings, immediately issuing decisions authorizing abandonment or discontinuance; and
 - (ii) In exemption proceedings, immediately vacating the decision that postponed the effective date of the exemption.
- (8) In proceedings under the Feeder Railroad Development Program under 49 U.S.C. 10907 and the implementing regulations at 49 CFR part 1151:
 - (i) Whether to accept or reject primary applications under 49 CFR 1151.2(b); competing applications under 49 CFR 1151.2(c); and incomplete applications under 49 CFR 1151.2(d).

(ii) Whether to grant waivers from specific provisions of 49 CFR part 1151.

(9) In exemption proceedings subject to environmental or historic preservation reporting requirements, to issue a decision, under 49 CFR 1105.10(g), making a finding of no significant impact where no environmental or historic preservation issues have been raised by any party or identified by the Board's Section of Environmental Analysis.

(10) Whether to issue notices of exemption under 49 U.S.C. 10502:

(i) For acquisition, lease, and operation transactions under 49 U.S.C. 10901 and 10902 and the implementing regulations at 49 CFR part 1150, subparts D and E;

(ii) For connecting track constructions under 49 U.S.C. 10901 and the implementing regulations at 49 CFR 1150.36;

(iii) For rail transactions under 49 U.S.C. 11323 and the implementing regulations at 49 CFR 1180.2(d); and

(iv) For abandonments and discontinuances under 49 U.S.C. 10903 and the implementing regulations at 49 CFR 1152.50.

(11) When an application or a petition for exemption for abandonment is filed, the Director will issue a notice of that filing pursuant to 49 CFR 1152.24(e)(2) and 49 CFR 1152.60, respectively.

(12) Whether to issue a notice of exemption under 49 U.S.C. 13541 for a transaction under 49 U.S.C. 14303 within a motor passenger carrier corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.

(13) Whether to issue rail modified certificates of public convenience and necessity under 49 CFR part 1150, subpart C.

(14) Whether to waive the regulations at 49 CFR part 1152, subpart C, on appropriate petition.

(15) To reject applications, petitions for exemption, and verified notices (filed in class exemption proceedings) for noncompliance with the environmental rules at 49 CFR part 1105.

(16) To reject applications by The Burlington Northern and Santa Fe Railway Company to abandon rail lines in North Dakota exceeding the 350-mile cap of section 402 of Public Law 97-102, 95

Stat. 1465 (1981), as amended by The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, section 343 (Oct. 28, 1991).

(c) Office of Compliance and Enforcement. The Office of Compliance and Enforcement is delegated the authority to:

(1) Reject tariffs and railroad transportation contract summaries filed with the Board that violate applicable statutes, rules, or regulations. Any rejection of a tariff or contract summary may be by letter signed by or for the Director, Office of Compliance and Enforcement, or the Chief, Section of Tariffs, Office of Compliance and Enforcement.

(2) Issue, on written request, informal opinions and interpretations on carrier tariff provisions, which are not binding on the Board.

(3) Grant or withhold special tariff authority granting relief from the provisions of 49 CFR part 1312. Any grant or withholding of such relief may be by letter signed by or for the Director, Office of Compliance and Enforcement, or the Chief, Section of Tariffs, Office of Compliance and Enforcement.

(4) Resolve any disputes that may arise concerning the applicability of motor common carrier rates under 49 U.S.C. 13710(a)(2).